FA/5588/1998 1/5 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5588 of 1998

Date of Decision : 03.08.2005

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DIPAK BABUBHAI VAGHARI - Appellant(s)

Versus

SATYANARAYAN DOODHNATH MISHRA & 1 - Defendant(s)

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Coram :

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for Reporting ?

Appearance :

MR MTM HAKIM for Petitioner No(s).: 1.
NOTICE SERVED for Respondent No(s).: 1.
MS MEGHA JANI for Respondent No(s).: 2.

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Per : Bhawani Singh, Chief Justice (Oral)

This appeal is directed against the award of the Motor Accident Claims Tribunal, Baroda in MACP No. 1682 of 1992 dated May 8, 1998.

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Whether Reporters of Local Papers may be allowed to see the judgment?

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Accident took place on 23.3.1991 at about 2.00 o'clock when the mother and father of the claimant were taken by auto rickshwa GRQ 1869 from Gotri to Illora Park (South to North). Allegation is, the rickshwa driver drove the vehicle to wrong side, as a result, collided with the rear portion of the truck. Mother of the claimant suffered serious injuries, taken to Hospital but succumb to injuries on 30.3.1991. She was 44 year old, dealing in vegetables and fruits on a lorry in the vegetable market situated out side Amra Kunj Near Illora Park earning average Rs.3000.00 p.m. Although claim was filed by her husband Babu Ramsing Vaghari, but he died, therefore, succeeded by the claimant. Driver of the auto rickshwa did not contest the claim while Insurance Company disputed the claim stating inter alia that the driver of the auto rickshwa was not negligent in driving the vehicle. It was truck driver who, after causing the accident, went away,

whereabouts are not known, therefore, owner, truck driver and the Insurance Company with which truck was insured ought to have been made parties. Consequently, point for determination by the Claims Tribunal was, which vehicle was responsible for the accident, causing death of the deceased. Parties led evidence, however, the Claims Tribunal recorded finding that the truck driver was responsible for the accident, therefore, dismissed the claim petition. This finding is the subject matter of challenge through this appeal plua award of compenstion in case finding of the tribunal is reversed.

Both the sides have been heard through the learned counsel. Record perused carefully. Primary question for determination is how the accident has taken place. For this purpose, evidence has to be read carefully. It can be analyzed from the record that the auto rickshwa was going from south towards north. After some distance, it took turn towards left since vegetable market is located on the left side of the road near Meldi Mata Temple on the west. While

turning to the left side, it intruded into the wrong side, as a result, right side was hit by the truck coming from north towards south. With this analysis of evidence, it is crystal clear that, there is no negligence on the part of the truck. Truck was moving on its right side of the road nor there is allegation in the panchanama or evidence that the truck was driven on the wrong side of the road. It was auto rickshwa which went to the wrong side before turning to the left. Consequently, assessment of evidence by the Claims Tribunal is not justified, therefore, finding recorded by the Claims Tribunal is set aside.

Having come to the aforesaid conclusion, assessment of compensation has to be made. Claimant states that she was earning Rs.3000.00 p.m. By dealing in vegetables and fruits. Evidence also suggests that her husband and son were also dealing with the fruits and vegetables along with her. Assuming she was earning Rs.3000.00, it is to be divided in three, leaving behind Rs.1000.00 to be her income, per month, After making deduction of 1/3rd towards

personal expenditure, remaining amount comes to Rs.667 multiplied by 12 and then 15, total compensation works out to Rs.1,20,000.00 + Rs.5000.00 (Consortium), Rs.2500.00 (Loss to the estate, Rs.2000.00 (funeral expenses), Rs.2000.00 for pain, shock and suffering and medical treatment. Consequently, appeal is allowed. Award of the Motor Accident Claims Tribunal is set aside. Claimant is awarded Rs.1,31,500.00 {Rs.one lakh thirty one thousand five hundred only) with interest at the rate of 9 per cent per annum from the date of the application till payment within two months from this order. Costs of this appeal be suffered by the parties.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K. RATHOD]
JUDGE

Vyas